

The only issue before the Board on this appeal is whether the contract of employment was made in the state of Kansas.

FINDINGS OF FACT

After reviewing the record compiled to date, the Board finds:

1. The claimant and Gary Grier, respondent's owner, became acquainted when claimant was a kitchen manager at the Elks Lodge in Goodland, Kansas, and Mr. Grier was a food service salesman. When Mr. Grier left that route, his replacement gave claimant Mr. Grier's phone number. Claimant called Mr. Grier and sold him some video arcade machines.

2. Claimant delivered the video arcade machines to Mr. Grier in Alma, Nebraska. At that time Mr. Grier showed claimant the steak house that he had acquired. Claimant testified that during the visit Mr. Grier inquired whether claimant would be interested in managing the kitchen. Claimant advised Mr. Grier that he was not interested.

3. Claimant was in Goodland, Kansas, and had a telephone conversation with Mr. Grier, two weeks after the delivery of the machines. Mr. Grier informed claimant that a house had been purchased and claimant could live there rent free for the first month and at a reduced rate thereafter if claimant would be the manager of the kitchen. Claimant further testified the parties discussed salary and claimant accepted the job.

4. After the telephone discussion, claimant rented a moving van and relocated to Alma, Nebraska. Claimant moved into the house discussed during the telephone conversation and began working for respondent. Claimant's mother testified claimant advised her that he had accepted the job in Nebraska because of the free housing for a period of time. Claimant's mother noted it was clear claimant had accepted the job before he left for Nebraska.

5. Mr. Grier denies the claimant's version of hire. Mr. Grier denies offering claimant a job when claimant delivered the video machines. But Mr. Grier agrees he did tell claimant there might be an opening for a kitchen manager at the steak house. Mr. Grier testified he could not contact claimant because claimant did not have a telephone. Mr. Grier then had a mutual acquaintance tell claimant to get in touch with Mr. Grier if claimant was interested in the job. Mr. Grier denies he ever called claimant while claimant was in Kansas and offered him a job.

6. Mr. Grier testified that a week after claimant delivered the video machines, the claimant and his wife returned to Alma, Nebraska, and at that time Mr. Grier told claimant there would be an opening at the steak house. Mr. Grier agreed there was a later telephone conversation about the rental house but denies claimant told him he was accepting the job. Mr. Grier testified the claimant never told him he was accepting the job prior to the time he showed up in Nebraska.

CONCLUSIONS OF LAW

It is uncontroverted that respondent does not do business in the state of Kansas and the work-related accident occurred in the state of Nebraska. Therefore, under K.S.A. 44-506, the Kansas Workers Compensation Act will only apply if the contract of employment was made within the state.

In the case of *Chapman v. Beech Aircraft Corp.*, 20 Kan. App. 2d 962, 894 P.2d 901 (1995), the Supreme Court of Kansas reaffirmed the State's policy of liberally construing the Kansas Workers Compensation Act for the purpose of bringing employers and employees within its provisions and to provide the protections of the Act to both, citing K.S.A. 44-501(g).

In *Shehane*,¹ the Court held:

The basic principle is that a contract is "made" when and where the last act necessary for its formation is done. *Smith v. McBride & Dehmer Construction Co.*, 216 Kan. 76, 530 P.2d 1222 (1975). When that act is the acceptance of an offer during a telephone conversation, the contract is "made" where the acceptor speaks his or her acceptance. *Morrison v. Hurst Drilling Co.*, 212 Kan. 706, Syl. ¶ 1, 512 P.2d 438 (1973). . .

The Workers Compensation Act applies to work-related accidents sustained outside the state when the employment contract is made within the State of Kansas, unless the contract otherwise specifically provides.

. . . That the workmen's compensation act shall apply also to injuries sustained outside the state where: (1) The principal place of employment is within the state; or (2) the contract of employment was made within the state, unless such contract otherwise specifically provides: . . .²

The conflict in testimony between claimant and respondent's owner, Mr. Grier, creates a credibility question in this matter. Sometimes, when an Administrative Law Judge renders a decision regarding the credibility of witnesses who testify live before him, as in this case, the Board gives some deference to that opinion. The Administrative Law Judge is in the enviable position of being able to assess witness credibility from that in-person testimony. However, in this case the Administrative Law Judge noted claimant and the owner of respondent were equally credible. The Administrative Law Judge then noted

¹*Shehane v. Station Casino*, 27 Kan. App. 2d 257, 261, 3 P.3d 551 (2000).

²K.S.A. 44-506.

claimant would benefit financially if his version of hire was adopted and concluded there was insufficient evidence to find the claimant more credible than respondent.

The Board disagrees. There is nothing in the record to indicate it is more financially beneficial to pursue the workers compensation claim in Kansas rather than Nebraska. Although the Board is not unmindful of the casual nature of the employment negotiations in this case, nonetheless, the claimant's version is more persuasive when the entire record is considered. It is significant that claimant loaded his belongings and relocated to another state. Adopting respondent's version of events would require a finding that claimant made the move without knowing he had a job or even whether the job was still open. It is equally significant that when claimant arrived in Nebraska he immediately moved into the house provided by respondent and began working. Lastly, although perhaps a biased witness, claimant's mother testified her son had told her he had accepted a job in Nebraska and was moving.

Claimant testified he had a telephone conversation in July 1998, while in his home in Goodland, Kansas, with Gary Grier, owner of respondent. During that telephone conversation, the salary for the job as well as terms for rental of a house were discussed and an offer of employment was made and claimant accepted. The acceptance of the employment offer during the telephone conversation between claimant and Mr. Grier, respondent's owner, while claimant was in his home in Goodland, Kansas, resulted in a contract being "made" in the state of Kansas. The Board finds the Kansas Workers Compensation Act applies to this injury.

AWARD

WHEREFORE, the Board reverses the preliminary hearing finding that the Division of Workers Compensation lacks jurisdiction over this claim. Conversely, the Board finds for preliminary hearing purposes, based upon the record compiled to date, that the Division of Workers Compensation does have jurisdiction over this claim as the parties' employment contract was made within the state of Kansas. The Board remands this claim to the Judge to address the remaining preliminary hearing issues.

IT IS SO ORDERED.

Dated this _____ day of February 2002.

BOARD MEMBER

c: John M. Ostrowski, Attorney for Claimant
 Ronald J. Laskowski, Attorney for Respondent
 Bruce E. Moore, Administrative Law Judge
 Philip S. Harness, Workers Compensation Director